

William Safire

Where Are the Civil Liberties People Now?

Washington

THE PUBLICITY extravaganza in federal court-house here is the most inherently unfair trial in many a year: the accused face the wrong charge in the wrong place before the wrong judge.



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The central accusation is not that the President's men actually "covered up" the Watergate break-in; it is that they "conspired" to do so. The broad conspiracy cop-out is used when a prosecutor cannot prove the crime itself; its use ordinarily makes the skin of civil libertarians crawl.

The wrong place is, Washington, D.C., hotbed of anti-Nixon sentiment, center of all the Watergate publicity, where defendants are spat upon as they come to court, the one area in the United States most

likely to burden any juror with the most prejudice.

The wrong judge is "Maximum John" Sirica, the man who rode to renown by cracking the case originally with his aggressive prosecution from the bench. This judge, who appointed himself to try this case, cannot be as disinterested as a judge must be.

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IT MIGHT BE good to remember what this trial is about. It is not about the fair application of the laws to the formerly high and mighty, since the case has been so blatantly rigged against them.

Ages ago, when Special Prosecutor Archibald Cox fought against forcing the defendants to testify at televised public hearings, making the sensible point that such pre-trial publicity would harm their chances for a fair trial, Senator Sam Ervin grandly swept aside that objection, saying that the exposure of the truth was more important than putting a few men in jail. Now the government is trying to have it both ways.

Those who are profoundly convinced that the Nixon men are guilty of trying to subvert our civil liberty should be in the vanguard of those demanding the rights of these particular defendants be scrupulously safeguarded. But they are silent, perhaps in the mistaken belief that excesses of power can be curbed by the counter-application of excesses of power.

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THIS IS NOT the fair trial of Mitchell, Haldeman et al, as it could and should have been, but the show trial by proxy of Richard Nixon. Frustrated by the pardon of the man they wanted to see broken and punished before their eyes, the Nixon-haters need a substitute show trial as an emotional outlet.

That is why there is so much salivating at the prospect of fresh tapes showing the former President to be culpable, and of the dramatic possibilities of defendants blaming their safely fallen leader to save their skins. Most of the accused will cater to the public demand, hoping to be let off in a national fist-shaking in the direction of San Clemente.

Out there, however, Mr. Nixon is not cooperating in the general hammering of nails into the coffin containing his reputation. For a time, the reader will recall, there was a spreading suspicion that his illness was a trick, an orchestrated spate of rumors first to encourage and later to excuse the action of President Ford in pardoning him.

To the keen disappointment of those who write his name in vitriol, Mr. Nixon turned out to be legitimately ill. This was especially infuriating since it could not be complained about; ironically, the people who most fervently wish him the speediest recovery are the ones who despise him most.

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BECAUSE Mr. Ex- is out of reach, both physically and legally, his pursuers have turned to this trial to flay him by proxy. Trial by fury is really all the Nixon-haters have left, and they will seek to seal the judgment of history now, as if history can be prevented from coolly revising the record later. In so doing, the prosecution in the court and in the press claim to be "letting the system work" — when they are abusing the judicial system to pre-write historic condemnation of a man who is not there in the dock. That system is damaged severely whenever the wrong charge in the wrong place in front of the wrong judge is wrongly hailed as justice.

Non-haters have a vision to cheer us up. It is the year 2000, and in our vision a decrepit old man dodders up the steps of the White House, supported on either side by a governor named Cox and a senator named Eisenhower, to be greeted at the front door by his daughter Julie, in her second term as President of the United States.

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